APPENDIX A

[Filed Aug. 19, 1999]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. C-96-2976 SI

UNITED STATES OF AMERICA, ex rel. PLUMBERS & STEAMFITTERS LOCAL UNION No. 38 and LAWRENCE J. MAZZOLA,

Plaintiffs,

v.

C. W. ROEN CONSTRUCTION, Co., BRUCE A. ROEN, and JERALDINE C. BREAULT,

Defendants,

COMPLAINT

[False Claims Act]
[31 U.S.C. §§ 3729, *et seq.*]

JURISDICTION

1. This action is brought under the False Claims Act, 31 U.S.C. § 3729, *et seq.*, to recover monies falsely claimed by defendants and paid to them in the construction of a federally financed public works construction project. The Court's jurisdiction is conferred by 31 U.S.C. § 3730 and by 28 U.S.C. §§ 1331 and 1345.

2. This action also is brought under California Business and Professions Code §§ 17200, *et seq.* to enjoin defendants' continuing violations of the False Claims Act, the Davis-Bacon Act and the Copeland Anti-Kickback Act. The Court has supplemental jurisdiction of this claim under 28 U.S.C. § 1367.

VENUE

3. The acts complained of herein took place within the Northern District of California, specifically, in Sonoma County, California. Venue in the Northern District of California therefore is proper under 28 U.S.C. § 1391(b).

PARTIES

4. Plaintiff Plumbers & Steamfitters Local Union No. 38 ("U.A. Local 38") is a local labor organization representing plumbers, pipe fitters, steam fitters, gas fitters and refrigeration fitters in San Francisco, Marin, Sonoma, Lake and Mendocino Counties of California. Plaintiff U.A. Local 38 is affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, CLC ("United Association" or "U.A."). Plaintiff U.A. Local 38 has its principal office in San Francisco, California.

5. Plaintiff Lawrence J. Mazzola is a citizen and resident of San Francisco County, California. He is the Business Manager of plaintiff U.A. Local 38.

6. Defendant C. W. Roen Construction Co. is a corporation and a construction contractor doing business in the Northern District of California. Plaintiffs are informed and believe and thereupon allege that

said defendant has its principal place of business in Danville, California.

7. Defendant Bruce A. Roen is the President and Responsible Managing Officer ("RMO") of defendant C. W. Roen Construction, Co. As the RMO for defendant C. W. Roen Construction Co., defendant Roen is the qualifier for said defendant's contractor's license. In that capacity he is required by California Business and Professions Code § 7068.1 to exercise direct supervision and control over the operations of defendant C. W. Roen Construction Co. Plaintiffs are informed and believe and thereupon allege that defendant Roen has decided upon and directed the acts and practices of defendant C. W. Roen Construction Co. which are alleged herein. Plaintiffs are informed and believe and thereupon allege that defendant Roen resides within the Northern District of California.

8. Plaintiffs are informed and believe and thereupon allege that defendant Jeraldine Breault has been defendant C. W. Roen Construction Co.'s office manager on the construction project with which this lawsuit is concerned. Plaintiffs are informed and believe and thereupon allege that defendant Breault has signed or caused to be signed the false Statements of Compliance by which defendants obtained payments on the project. Plaintiffs are informed and believe and thereupon allege that defendant Breault resides within the Northern District of California.

STATEMENT OF CLAIM

9. On or about September 1, 1994, defendant C. W. Roen Construction Co. entered into a contract with the City of Santa Rosa, California, for the construction of a federally financed wastewater treatment

plant improvement project in said city, known as the Laguna Wastewater Treatment Plant Improvements Project ("Project"), for the sum of approximately $23,694,000.00. Because federal monies were used to finance the construction, the Project was and is governed by the provisions of the Davis-Bacon Act [40 U.S.C. § 276a], the Copeland Act [40 U.S.C. § 276c] and regulations promulgated thereunder [29 C.F.R. §§ 1.1 *et seq.* and 5.1, *et seq.*].

10. The Project construction contract incorporates the "contract documents" for the project, which documents include the notice inviting bids, instructions to bidders, bid forms, general conditions, supplementary conditions, general requirements, specifications, drawings and addenda, *inter alia*. Said contract documents are referred to collectively herein as the Project Contract Documents.

11. The Project Contract Documents require, *inter alia*, that defendants comply with the applicable U. S. Department of Labor general wage determinations, issued pursuant to the Davis-Bacon Act. Said wage determinations set out the prevailing wages defendants have been and are required to pay to persons employed in each of the various crafts and classifications of construction work involved in the construction of the Project. As required by the United States Environmental Protection Agency, the Project Contract Documents also include, *inter alia*, the labor standard provisions for federal and federally assisted contracts set forth at 29 C.F.R. § 5.5. The Project Contract Documents further provide that defendants are to comply with the more stringent of the prevailing wage requirements imposed by California or federal law.

12. Plaintiffs are informed and believe and thereupon allege that in the course of constructing the Project, defendants have made various claims for payment under the Project construction contract. Section 2 of the Copeland Act [40 U.S.C. § 276c], and the regulations promulgated thereunder, require as a prerequisite to payment that defendants submit weekly payroll reports and Statements of Compliance representing that defendants have complied with their prevailing wage and labor standards obligations.

13. In the course of constructing the Project, defendants have in fact filed such reports and statements. Defendants' Statements of Compliance have represented that defendants have paid to all persons employed on said project their full weekly wages as required by the contract, that the payrolls required to be submitted have been correct and complete, that the wage rates contained in said payrolls have been not less than the applicable wage rates contained in the contract's prevailing wage determination, and that the classifications set forth therein for each laborer or mechanic have conformed with the work he or she performed. The preprinted forms setting forth said Statements of Compliance include express warnings that the falsifications of any statement contained therein could subject the contractor to civil or criminal prosecution under the False Claims Act and 18 U.S.C. § 1001.

14. Said Statements of Compliance have been false, in that defendants have claimed that their employees installing certain piping, including mechanical, pressure, process, soil, waste, vent, potable and non-potable water piping have performed work within a Laborer wage rate classification. In fact, said work

was and is within the Plumbers & Steamfitter wage rate classification. Under General Wage Decision No. CA 940004, Modification No. 3, the United States Department of Labor's general wage determination governing the Project, the Plumber & Steamfitter wage rate has been approximately $24.43 per hour higher than the Laborer wage rate actually paid by defendants to the employees performing said piping work. Said Plumber & Steamfitter wage rate is the same as the rate negotiated by plaintiff U.A. Local 38 in its collective bargaining agreement.

15. More particularly, defendants have been and are obliged to pay Plumber & Steamfitter wage rates to persons performing piping work of every description and material, including but not limited to the unloading, distribution, fabrication, installation and testing of all process piping, waste, vent, drain, vacuum, chemical, gas, petrochemical, domestic and process water piping, valves, hangers and supports, temporary piping of every description, pneumatic instrumentation and controls, hydraulic piping and tubing, all mechanical process equipment including pumps, compressors, boilers, heat exchangers, centrifuges, heaters, tanks, chlorinators, ejectors and blowers, including all accessories and appurtenances, for mechanical process equipment. The only piping work for which the Laborer wage rate has been properly payable on the Project was the installation of surface and storm drain piping.

16. Plaintiffs are informed and believe and thereupon allege that construction of the Project requires approximately 28,640 hours of work for which Plumber & Steamfitter wages are required to be paid.

17. Plaintiffs are informed and believe and thereupon allege that from August 15, 1994 through April

21, 1996, defendants have filed said false Statements of Compliance for at least 77 weeks during the construction of the Project. Plaintiffs are informed and believe and thereupon allege that since April 21, 1996, said defendant have continued and will continue to file such false Statements of Compliance through the completion of the Project, which is expected to be in mid-February of 1997.

18. In doing the acts described above, defendants violated the Davis-Bacon Act, the Copeland Act, the regulations promulgated thereunder at 29 C.F.R. §§ 1.1, *et seq.* and 5.1, *et seq.*, the False Claims Act and 18 U.S.C. § 1001.

19. As a direct and proximate result of defendants' violations of the Davis-Bacon Act and the regulations promulgated thereunder, the employees of defendant C. W. Roen Construction Co. who performed work within the Plumber & Steamfitter wage rate classification were paid substantially less than they were required to be paid for such work. Plaintiffs are informed and believe and thereupon allege that said underpayment by defendant C. W. Roen Construction Co. on the Project will exceed $699,675.20.

20. As a further direct and proximate result of defendants' violations of the Davis-Bacon Act and the regulations promulgated thereunder, defendants have frustrated the Congressional intent that all work of a similar character be paid applicable prevailing wages as set forth in the United States Department of Labor's General Wage Decisions. Defendants have thereby deprived the United States of America of the full benefit of its bargain in funding the Project.

FIRST CLAIM FOR RELIEF: FALSE CLAIMS ACT VIOLATIONS BY DEFENDANTS C. W. ROEN CONSTRUCTION CO., BRUCE A. ROEN AND JERALDINE C. BREAULT

21. By using false Statements of Compliance as described above in order to obtain contract payments on the Project, defendants knowingly made, used and caused to be made and used false statements to get false or fraudulent claims paid within the meaning of and in violation of the False Claims Act, 31 U.S.C. § 3729.

22. Plaintiffs discovered the False Claims Act violations set forth herein through their own independent investigation.

23. Plaintiffs are informed and believe and thereupon allege that the False Claims Act violations set forth herein are not the subject of a civil suit or an administrative civil money penalty proceeding in which the United States Government is already a party.

24. Plaintiffs are informed and believe and thereupon allege that the False Claims Act violations set forth above have not been publicly disclosed in a criminal, civil or administrative hearing, in a congressional, administrative or Government Accounting Office report, hearing, audit or investigation, or by the news media. Even if said violations had been so disclosed, the Court nevertheless would have jurisdiction of this action because plaintiffs are an original source of the information relating to the violations set forth above.

25. Plaintiffs have direct and independent knowledge of the information establishing the False Claims

Act violations set forth above and have voluntarily provided said information to the United States Government before filing this action.

26. By reason of the False Claims Act violations set forth above, each of defendants C. W. Roen Construction, Co., Bruce A. Roen, and Jeraldine C. Breault, is liable to the United States Government for a civil penalty of not less than $5,000.00 nor more than $10,000.00 for each of the false Statements of Compliance they submitted during the construction of the Project, in an amount exceeding $770,000.00.

27. By reason of the False Claims Act violations set forth above, defendants are further liable to the United States Government for three times the damages sustained because of said violations. Plaintiffs are informed and believe and thereupon allege that said treble damages exceed the sum of $2,099,025.60.

SECOND CLAIM FOR RELIEF: CALIFORNIA BUSINESS AND PROFESSIONS CODE VIOLATIONS BY ALL DEFENDANTS

28. Defendants' acts and practices described above were and are acts of unfair competition under California Business and Professions Code §§ 17200, *et seq.*

29. Plaintiffs are informed and believe and thereupon allege that defendants continue to perform the above-described piping work on public works projects, continue to violate the Davis-Bacon Act, the Copeland Act and the regulations promulgated thereunder by underpaying their employees performing said piping work, and unless enjoined and restrained by this Court from doing so, defendants will continue to violate the prevailing wage laws.

30. Defendants' acts and practices described above therefore are subject to injunction by this court pursuant to California Business and Professions Code §§ 17203 and 17204.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment as follows:

1. On their first claim for relief,

a. For an award to the United States Government of $10,000.00 against each of defendants C. W. Roen Construction, Co., Bruce A. Roen, and Jeraldine C. Breault for each false claim submitted during the construction of the Project, in a total amount to be proved at trial herein, which plaintiffs estimate will exceed $2,310,000.00, and

b. For an award to the United States Government of a sum exceeding $2,099,025.60 in treble damages, according to the proof herein, and

c. For an award to plaintiffs of 30 percent of the proceeds of any judgment or settlement herein, and

d. For an award to plaintiffs of their expenses, attorneys' fees and costs incurred herein.

2. On their second claim for relief,

a. For the Court's permanent injunction

i. Restraining defendants and their officers, representatives, agents and employees, and all persons acting in concert or participation with them, from violating the Davis-Bacon Act, the Copeland Act, and the regulations promulgated thereunder, and

ii. Directing defendants and their officers, representatives, agents and employees, and all persons acting in concert or participation with them, to take such affirmative action as will secure defendants' compliance therewith, and

b. For an award to plaintiffs of their expenses, attorneys' fees and costs incurred herein.

3. On both claims for relief, for such other and further relief as the Court deems just and proper.

Dated: August 19, 1996

McCarthy, Johnson & Miller,
Law Corporation

By: /s/ John J. Davis, Jr.
John J. Davis, Jr.

By: /s/ Patricia A. McCormick
Patricia A. McCormick
Attorneys for Plaintiffs

APPENDIX B

U.S. DEPARTMENT OF LABOR [DoL Logo]

Employment Standards Administration
Wage and Hour Division
211 Main Street, Room #341
San Francisco, CA 94105
Phone: (415) 744-6620

January 18, 1994

John J. Davis, Jr., Esq.
McCarthy, Johnson & Miller
595 Market Street, Suite 2200
San Francisco, California 94105

RE: AGREEMENT BETWEEN NORTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS AND PIPE TRADES DISTRICT COUNCIL NO. 51

Dear Mr. Davis:

This letter is as per our discussion of January 7, 1994 related to the subject agreement. As of September, 1992, the agreement establishes the prevailing practice in Northern California for the construction of water treatment plants, wastewater treatment plants, water reclamation plants and all pumping facilities related to such plants in Northern California. For contracts for the construction of such plants awarded after September, 1992 and subject to Davis-Bacon and Related Acts the Wage and Hour Division will require the payment of prevailing wages in accordance with the agreement.

A copy of the agreement is attached. If you should have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Frank A. Conte
FRANK A. CONTE
District Director

Enclosure: copy of agreement

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AGREEMENT BETWEEN
NORTHERN CALIFORNIA DISTRICT COUNCIL
OF LABORERS AND PIPE TRADES
DISTRICT COUNCIL NO. 51

1) In the construction of water treatment plants, wastewater (i.e., sewage) treatment plants, water reclamation plants, and all pumping facilities related to such plants, for work performed both inside and outside of buildings, the prevailing rate of per diem wages established for Plumber-Steamfitter-Pipefitter is paid to those employees who perform all piping work of every description and material (except as noted in paragraph 2), including but not limited to the unloading, distribution, fabrication, installation and testing of all process piping, soil, waste, vent, drain, vacuum, chemical, gas petrochemical, domestic and process water piping, valves, hangers and supports, temporary piping of every description, pneumatic instrumentation and controls, hydraulic piping and tubing, all mechanical process equipment including the setting of pumps, compressors, boilers, heat exchanges, centrifuges, heaters, tanks, chlorinators, ejectors and blowers integral to the piping system and all related piping thereof, including all accessories and appurtenances, for mechanical process equipment.

2) The prevailing rate of per diem wages established for Laborers is paid to those employees who, on the facilities described above, perform the installation of non-pressurized surface and storm drain piping the infall and outfall lines and bypass feed lines and all laborers work in connection with cribbing and shoring, the breaking of concrete, pipe wrapping, dig-

ging, backfilling, tamping, resurfacing and paving of all ditches.

3) This language is agreed to by the Northern California District Council of Laborers and the Pipe Trades District Council #51.

/s/ Archie Thomas
ARCHIE THOMAS
Business Manager
Northern California
District Council
of Laborers

Dated: Sept. 2, 1992

/s/ Tom Hunter
TOM HUNTER
Business Manager
Pipe Trades District
Council #51

Dated: Sept. 1, 1992

APPENDIX C

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE HOUR DIVISION
211 Main Street, Suite 341
San Francisco, CA 94105
Phone: (415) 744-6620
FAX: (415) 744-7998

[DoL Logo]

March 11, 1996

John J. Davis, Jr., Esq.
McCarthy, Johnson & Miller
595 Market Street, Suite 2200
San Francisco, CA 94105

Re: Agreement Between Northern California District Council of Laborers and Pipe Trades District Council No. 51

Dear Mr. Davis:

This letter supersedes earlier correspondence from the Wage and Hour Division regarding the subject of prevailing practice as it pertains to the payment of wage rates for the construction of water treatment plants, wastewater plants, water reclamation plants and all pumping facilities related to such plants.

The Wage and Hour Division has determined that the Agreement between Northern California District Council of Laborers and Pipe Trades District Council No. 51 (copy attached) reflects a longstanding prevailing practice. The Department of Labor will therefore accept this Agreement as reflecting the prevailing practice.

Accordingly, for contracts for the construction of such plants awarded after September, 1992 and subject to the Davis-Bacon and Related Acts, the Wage and Hour Division will require the payment of prevailing wages in accordance with the Agreement. The Division is proceeding with enforcement action on such projects.

Sincerely,

/s/ Frank A. Conte	/s/ Richard Cheung
FRANK A. CONTE	RICHARD CHEUNG
District Director	Regional Wage Specialist

Enclosure: Copy of Agreement

AGREEMENT BETWEEN NORTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS AND PIPE TRADES DISTRICT COUNCIL NO. 51

1) In the construction of water treatment plants, wastewater (i.e., sewage) treatment plants, water reclamation plants, and all pumping facilities related to such plants, for work performed both inside and outside of buildings, the prevailing rate of per diem wages established for Plumber-Steamfitter-Pipefitter is paid to those employees who perform all piping work of every description and material (except as noted in paragraph 2), including but not limited to the unloading, distribution, fabrication, installation and testing of all process piping, soil, waste, vent, drain, vacuum, chemical, gas petrochemical, domestic and process water piping, valves, hangers and supports, temporary piping of every description, pneumatic instrumentation and controls, hydraulic piping and tubing, all mechanical process equipment including the setting of pumps, compressors, boilers, heat exchanges, centrifuges, heaters, tanks, chlorinators, ejectors and blowers integral to the piping system and all related piping thereof, including all accessories and appurtenances, for mechanical process equipment.

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3) This language is agreed to by the Northern California District Council of Laborers and the Pipe Trades District Council #51.

/s/ Archie Thomas
ARCHIE THOMAS
Business Manager
Northern California
District Council
of Laborers

Dated: Sept. 2, 1992

/s/ Tom Hunter
TOM HUNTER
Business Manager
Pipe Trades District
Council #51

Dated: Sept. 1, 1992